

DIVISION OF REVENUE

TECHNICAL INFORMATION MEORIANDUM 2004-2

DATE: AUGUST 20, 2004

SUBJECT: INTERNET RETAIL SALE OF ANY TOBACCO PRODUCT

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House Bill 153 of the 142nd General Assembly amended Chapter 53 of Title 30 of the Delaware Code by inserting a new subchapter entitled: Subchapter VI. Delivery Sale of Cigarettes. This new subchapter will allow Internet retail sales of cigarettes and other tobacco products under certain terms and conditions.

Prior to initiating Internet retail sales of cigarettes or other tobacco products from a business location within or without Delaware or mailing, shipping, or otherwise delivering cigarettes or other tobacco products to customers within Delaware, every Internet retailer shall complete and file with the Delaware Division of Revenue the Delaware Form CRA (Combined Registration Application) to register the Internet retailer's name, trade name and address of the principal place of business and any other place of business. Internet retailers selling, mailing, shipping, or otherwise delivering cigarettes or other tobacco products to customers within Delaware from a business location outside of Delaware must complete only Part A of the Delaware Form CRA. Internet retailers selling, mailing, shipping, or otherwise delivering cigarettes or other tobacco products to customers within Delaware from a business location within Delaware must complete Parts A, Band C of Delaware Form CRA. When completing Part C of Delaware Form CRA, the Internet retailer shall be required to apply for a General Retailer license in accordance with Section 2905 of 30 Del. C. and a Cigarette Retailer license in accordance with Section 5308(b) of 30 Del. C.

Every Internet retailer accepting a purchase order for any sale of cigarettes or other tobacco products to a consumer in this State where either (i) the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service; or (ii) the cigarettes or other tobacco products are delivered by use of the mails or any person engaged in the commercial delivery of letters, packages, or other containers shall collect and remit to the Delaware Division of Revenue all cigarette or other tobacco product taxes imposed by this State with respect to such delivery sale. Such collection and remission shall not be required to the extent that the Internet retailer sells and ships to the Delaware consumer packages of cigarettes affixed with the Delaware tax stamp or has otherwise obtained proof that such taxes already have been paid to the State. A sale of cigarettes or other tobacco products not for personal consumption to a person who is a distributor or a retail dealer shall not be considered a delivery sale.

On or before the 10th day of each calendar month, every Internet retailer that has made a delivery sale or mailed, shipped, or otherwise delivered cigarettes or other tobacco products, either without a stamp or affixed with any state stamp, to a customer within Delaware from a

business location either within or without Delaware must, in connection with any such sale during the previous calendar month, file a completed Delaware Form 5367 C and Schedule 5367 C-A for sales of cigarettes and Delaware Form 5367- OTP and Schedule 5367 OTP-A for sales of all other tobacco products (copies attached) with the Delaware Division of Revenue. Form 5367 C is filed to remit all collected Delaware cigarette tax not previously paid before the sale and Delaware Schedule 5367 C-A is filed to individually identify all Internet retail sales for which a delivery sale has been made to a Delaware customer. Form 5367 OTP is filed to remit Delaware other tobacco products tax not previously paid before the sale and Schedule 5367 OTP-A is filed to individually identify all Internet retail sales for which a delivery sale has been made to a Delaware customer. The filing of Forms 5367 C & 5367 OTP and Schedules 5367 C-A & 5367 OTP-A are in addition to the filing requirements of a General Retailer contained in Section 2905(b)(1) of 30, Del. C..

Chapter 53 of Title 30 requires that the first vendor who has possession of unstamped tobacco products in this State for sale in this State shall be deemed an affixing agent. Any Internet seller of cigarettes, who is not located in Delaware, does not need to become an affixing agent. However, the Internet seller must either become an affixing agent in order to purchase and affix Delaware cigarette stamps or remit the tax using Form 5367 C. The Other Tobacco Products Tax is 15% of the wholesale cost of the tobacco products sold and the tax must be remitted on Form 5367 OTP. Information concerning becoming an affixing agent may be found at: http://www.state.de.us/revenue/obtltaxtips/tt-cigarette_other_tobacco_products.htm

House Bill 153 with House Amendment #1 was signed on June 30, 2003 and was effective on that date. Reports, returns and payment for the period beginning June 30, 2003 through August 31, 2004 are due on or before September 30, 2004. Thereafter, reports, returns and payments are due on or before the 10th day of the month following the month during which any tobacco product was delivered in this State.

Please contact Jeanne Davis, 302-577-8448, or by email jeanne.davis@state.de.us, if you have any questions concerning Internet cigarette retail sales.

Patrick T. Carter

Director of Revenue